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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 SECURITY ALARM FINANCING
8 ENTERPRISES, L.P. d/b/a SAFEGUARD
9 SECURITY,

Case No. 2:16-CV-592 JCM (VCF)

ORDER

Plaintiff(s),

10 v.

11 MIKAYLA NEBEL, et al.,

12 Defendant(s).
13

14 Presently before the court is Magistrate Judge Ferenbach's report and recommendation.
15 (ECF No. 100). No objections have been filed, and the deadline for filing objections has since
16 passed.

17 Also before the court is plaintiff Security Alarm Financing Enterprises, L.P.'s motion for
18 attorney's fees. (ECF No. 127). Defendant Russel Niggemyer has not filed a response, and the
19 time for doing so has since passed.

20 **I. Background**

21 This case, a trademark infringement action, was originally filed in the Northern District of
22 California. Initially, the complaint named two defendants, Russel Niggemyer and Mikayla Nebel.
23 Defendant Nebel has since been dismissed from the action.¹

24 Defendant Niggemyer was served with a summons on September 23, 2015. (ECF No. 7).
25 Defendant filed a motion to dismiss for lack of personal jurisdiction with the United States District
26 Court, Northern District of California on November 9, 2015. (ECF No. 23). The court granted
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28 ¹ On April 6, 2017, the court granted a stipulation of dismissal with prejudice as to
defendant/counterclaimant Mikayla Nebel. (ECF No. 121).

1 the motion, finding that defendants “did not expressly aim” any alleged copyright infringement at
2 California. (ECF No. 52 at 12). The court transferred the action to the United States District
3 Court, District of Nevada on March 14, 2016, because both defendants were citizens of Nevada.
4 *Id.* at 13.

5 Defendant continued to communicate with plaintiff but failed to appear or otherwise
6 respond to the complaint after the case was transferred. (ECF No. 101). Due to the defendant’s
7 inaction, plaintiff filed a motion for entry of clerk’s default (ECF No. 88), and the clerk entered
8 default against defendant on September 26, 2016, (ECF No. 91). On November 10, 2016, plaintiff
9 filed a motion for default judgment against defendant (ECF No. 101), which this court granted on
10 May 30, 2017, (ECF No. 122).

11 **II. Legal Standard**

12 *a. Report and recommendation*

13 This court “may accept, reject, or modify, in whole or in part, the findings or
14 recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1). Where a party timely objects
15 to a magistrate judge’s report and recommendation, then the court is required to “make a de novo
16 determination of those portions of the [report and recommendation] to which objection is made.”
17 28 U.S.C. § 636(b)(1).

18 Where a party fails to object, however, the court is not required to conduct “any review at
19 all . . . of any issue that is not the subject of an objection.” *Thomas v. Arn*, 474 U.S. 140, 149
20 (1985). Indeed, the Ninth Circuit has recognized that a district court is not required to review a
21 magistrate judge’s report and recommendation where no objections have been filed. *See United*
22 *States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard of review
23 employed by the district court when reviewing a report and recommendation to which no
24 objections were made).

25 *b. Motion for attorney’s fees*

26 Federal Rule of Civil Procedure 54(d)(2) allows a party to file a motion for attorney’s fees
27 if it: (1) is filed within 14 days after judgment is entered; (2) identifies the legal basis for the award;
28 and (3) indicates the amount requested or an estimate thereof. Moreover, “[a] federal court sitting

1 in diversity applies the law of the forum state regarding an award of attorneys' fees." *Kona*
2 *Enterprises, Inc. v. Estate of Bishop*, 229 F.3d 877, 883 (9th Cir. 2000). A Nevada trial court "may
3 not award attorney fees absent authority under a statute, rule, or contract." *Albios v. Horizon*
4 *Communities, Inc.*, 132 P.3d 1022, 1028 (Nev. 2006).

5 In *Brunzell*, the Nevada Supreme Court articulated four factors for a court to apply when
6 assessing requests for attorney's fees:

7 (1) the qualities of the advocate: his ability, his training, education, experience,
8 professional standing and skill; (2) the character of the work to be done: its
9 difficulty, its intricacy, its importance, time and skill required, the responsibility
10 imposed and the prominence and character of the parties where they affect the
importance of the litigation; (3) the work actually performed by the lawyer: the
skill, time and attention given to the work; (4) the result: whether the attorney was
successful and what benefits were derived.

11 455 P.2d at 33. The trial court may exercise its discretion when determining the value of
12 legal services in a case. *Id.* at 33–34.

13 Additionally, a trial court applying Nevada law must utilize *Bruzell* to assess the merits of
14 a request for attorney's fees, yet that court is not required to make findings on each factor. *Logan*
15 *v. Abe*, 350 P.3d 1139, 1143 (Nev. 2015). "Instead, the district court need only demonstrate that
16 it considered the required factors, and the award must be supported by substantial evidence." *Id.*
17 (citing *Uniroyal Goodrich Tire Co. v. Mercer*, 890 P.2d 785, 789 (Nev. 1995), *superseded by*
18 *statute on other grounds as discussed in RTTC Commc'ns, LLC v. Saratoga Flier, Inc.*, 110 P.3d
19 24, 29 n.20 (Nev. 2005)).

20 **III. Discussion**

21 *a. Report and recommendation*

22 No party has objected to the report and recommendation. Further, as the court noted in its
23 order dated May 30, 2017, the pending report and recommendation is moot due to the dismissal of
24 defendant Nebel from the case. (ECF No. 122). Therefore, the court will reject the report and
25 recommendation as moot.

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28 ...

1 **b. Motion for attorney's fees**

2 **i. Eligibility for attorney's fees**

3 15 U.S.C. § 1117(a)(3), a section of the Lanham Act, authorizes courts to award attorney's
4 fees in exceptional cases. The statute does not define the term exceptional, but the Ninth Circuit
5 has clarified that when acts of infringement are malicious, fraudulent, deliberate, or willful, an
6 award of attorney's fees is appropriate in a Lanham Act case. *Rio Props. Inc. v. Rio Int'l Interlink*,
7 284 F.3d 1007, 1023 (9th Cir. 2002); *Playboy Enters., Inc. v. Baccarat Clothing Co.*, 692 F.2d
8 1272, 1276 (9th Cir. 1982). Subsequent cases citing *Rio Properties* have held that when a
9 complaint pleads willful infringement and district court enters default judgment, the court must
10 find that the infringement was willful when evaluating motions for attorney's fees. *See Derek*
11 *Andrew, Inc. v. Poof Apparel Corp.*, 528 F.3d 696, 702 (9th Cir. 2008); *Teller v. Dogge*, no. 2-12-
12 cv-00591-JCM-GWF, 2014 WL 4929413, at *6 (D. Nev. Sept. 30, 2014).

13 Here, the complaint alleges that defendant knowingly, intentionally, willfully and
14 maliciously disregarded plaintiff's intellectual property rights. (ECF No. 1). Acting as an agent
15 for defendant Nebel and in his own personal capacity, defendant Niggemyer ignored cease-and-
16 desist letters and intentionally violated plaintiff's trademark rights. *Id.* As the court has granted
17 default judgment in this case, the court must accept the noted factual allegations as true. *See Teller*,
18 2014 WL 4929413, at *6. Plaintiff is entitled to a judgment of attorney's fees in this case. *See*
19 *Rio Props.*, 284 F.3d at 1023; *see also Poof Apparel*, 528 F.3d at 702.

20 **ii. Evaluating the requested award**

21 Plaintiff requests the court award plaintiff \$49,073.60 in attorney's fees. (ECF No. 127).
22 In support of plaintiff's motion, it attached a declaration of counsel Steven A. Caloiaro, as well as
23 an exhibit detailing a summary of the work performed. (ECF Nos. 127-1 and 127-2). The
24 summary exhibit contains an itemized breakdown of fees incurred in maintaining the instant
25 action. (ECF No. 127-2). The itemization of fees demonstrates that counsel efficiently performed
26 tasks related to the litigation and assigned work in a cost-effective manner, as plaintiff's motion
27 suggests. *See id.*; *see also* (ECF No. 127) (stating that plaintiff's counsel assigned tasks to
28 associates with lower billing rates when appropriate).

1 Plaintiff's motion also addresses each of the factors under Local Rule 54-12 that a court
2 must consider when ruling on a motion for attorney's fees. The court will review each factor in
3 turn.²

4 *i. The results obtained*

5 Plaintiff's counsel successfully resolved plaintiff's claims against defendant Nebel. (ECF
6 No. 127). Plaintiff also obtained a monetary judgment of \$30,000.00³ and a permanent injunction
7 against defendant Niggemyer. *Id.*

8 *ii. The time and labor required*

9 In order to successfully advance plaintiff's claims, counsel filed and responded to
10 numerous motions, including motions to dismiss, motions for entry of default, a motion for default
11 judgment, and the instant motion for attorney's fees. (ECF No. 127). Plaintiff also participated in
12 several rounds of settlement negotiations and drafted multiple proposed settlement documents. *Id.*

13 *iii. The novelty and difficulty of questions involved*

14 Plaintiff's motion contends that trademark law is a specialized area of law. (ECF No. 127).
15 The primary claims asserted in this case were Lanham Act trademark infringement and false
16 endorsement as well as intentional misrepresentation. *Id.* Plaintiff represents that this case
17 represented a moderate level of difficulty. *Id.*

18 *iv. The skill required to properly perform the legal service*

19 Plaintiff contends that a high degree of skill was required to properly litigate this case, as
20 trademark law is a specialized field that requires considerable knowledge and experience. (ECF
21 No. 127).

22 *v. The preclusion of other employment by the attorney due to acceptance of this case*

23 Plaintiff represents that, while this case did involve active participation, plaintiff's counsel
24 was generally not precluded from accepting other work. (ECF No. 127).

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27 ² The court's discussion groups factors six and seven (the customary fee and whether it was
fixed or contingent), as discussion of these factors overlaps.

28 ³ Statutory damages in this case could have been as high as \$200,000. (ECF No. 127).
However, plaintiff sought damages of \$30,000 as well as a permanent injunction. *Id.*

1 vi. *The customary fee and whether it was fixed or contingent*

2 Plaintiff states that its counsel charged a customary hourly rate for this assignment, which
3 was not contingent upon any particular outcome. (ECF No. 127).

4 vii. *Any time limitations imposed by the client or circumstances*

5 The motion does not discuss any time limitations placed on counsel by plaintiff or by the
6 nature of the case. (ECF No. 127).

7 viii. *The experience, reputation, and ability of the attorneys*

8 Plaintiff's motion details the extensive experience its counsel brought to this case,⁴ which
9 includes many years of litigation and trademark-related experience as well as multiple notable
10 favorable judgments these litigators won for their clients. (ECF No. 127).

11 ix. *The undesirability of the case*

12 Plaintiff's motion mentions threats defendant made to plaintiff, to plaintiff's former
13 counsel, and to material witnesses. (ECF No. 127). Plaintiff asserts these threats made this case
14 more undesirable than similar trademark cases. *Id.*

15 x. *The nature and length of the professional relationship with the client*

16 Plaintiff's original counsel, Grennan, Pepper, Sallander, & Lally LLP, "has represented the
17 Plaintiff for a number of years." (ECF No. 127). Plaintiff's current counsel, Mr. Caloiaro, has
18 worked with plaintiff for approximately one year. *Id.*

19 xi. *Awards in similar cases*

20 Plaintiff cites three awards granted in similar cases to support its motion. (ECF No. 127).

21 In *Teller v. Dogge*, no. 2-12-cv-00591-JCM-GWF, 2014 WL 4929413, at *7-8 (D. Nev.
22 Sept. 30, 2014), the court awarded attorney's fees in the amount of \$500,000.00. The case lasted
23 two and a half years, contained rounds of discovery, and ended in default. *Id.* at *1.

24 In *Nevada Property 1, LLC v. Newcosmopolitanlasvegas.com*, no 2-12-cv-00866-JCM-
25 NJK, 2013 WL 167755, at *6 (D. Nev. Jan. 15, 2013), the court awarded attorney's fees in the

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27 ⁴ Initially, Robert L. Sallander, Jr. and Kyle G. Kunst of Greenan, Pepper, Sallander, &
28 Lally LLP represented plaintiff. When the case was transferred to the district of Nevada,
Brownstein Hyatt Farber Schreck was hired as local counsel, and eventually assumed the
substantive work on the case. Michael D. Rounds and Steven A. Caloiaro represented plaintiff
through Brownstein Hyatt Farber Schreck. (ECF No. 127).

1 amount of \$14,776.20. The case lasted eight months and did not have early motions to dismiss.
2 *Id.* at *1.

3 In *Mayweather v. Wine Bistro*, no. 2:13-cv-00210-JAD-VCF, 2014 WL 6882300, at *10
4 (D. Nev. Dec. 4, 2014), the court awarded attorney's fees of \$17,408.48. Counsel in that case did
5 not have to file or respond to early motions to dismiss, and the court found rates between \$295 and
6 \$675 to be reasonable for trademark litigation in Las Vegas, Nevada. *Id.* at *2.

7 *xii. Summary*

8 Plaintiff's motion demonstrates that its request for attorney's fees is reasonable in light of
9 the demands of the instant litigation and counsel's favorable results obtained for the client. The
10 court will grant plaintiff's motion, and award attorney's fees in the amount of \$49,073.60.

11 **IV. Conclusion**

12 Accordingly,

13 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Magistrate Judge
14 Ferenbach's report and recommendation (ECF No. 100) be, and the same hereby is, DENIED as
15 moot.

16 IT IS FURTHER ORDERED that plaintiff's motion for attorney's fees (ECF No. 127) be,
17 and the same hereby is, GRANTED.

18 IT IS FURTHER ORDERED that plaintiff shall prepare an appropriate judgment and
19 submit it to the court forthwith for signature.

20 DATED January 19, 2018.

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22 _____
UNITED STATES DISTRICT JUDGE